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SENATE BILL 367

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO THE PRACTICE OF OPTOMETRY; EXCLUDING CERTAIN  
SURGERIES AND INJECTIONS FROM THE PRACTICE OF OPTOMETRY;  
PROVIDING FOR CERTIFICATION IN THE USE OF LASER TREATMENT  
DEVICES; PROSCRIBING CERTAIN PRACTICES WITHOUT CERTIFICATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-2-2 NMSA 1978 (being Laws 1973,  
Chapter 353, Section 2, as amended) is amended to read:

"61-2-2. DEFINITIONS.--As used in the Optometry Act:

A. "practice of optometry":

(1) means:

(a) the employment of any subjective or  
objective means or methods, including but not limited to the  
use of lenses, prisms, autorefractors or other automated  
testing devices, and includes the prescription or

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1 administration of drugs for the purpose of diagnosing the  
2 visual defects or abnormal conditions of the human eye and its  
3 adnexa; and

4 (b) the employing, adapting or  
5 prescribing of preventive or corrective measures, including but  
6 not limited to lenses, prisms, contact or corneal lenses or  
7 other optical appliances, ocular exercises, vision therapy,  
8 vision training and vision rehabilitation services and the use  
9 of surgical procedures, except those excluded by Paragraph (2)  
10 of this subsection, and includes the prescription or  
11 administration of all drugs, except a drug listed in Schedule I  
12 or II of the Controlled Substances Act or rules adopted  
13 pursuant to that act, rational for the correction, relief or  
14 referral of visual defects or abnormal conditions of the human  
15 eye and its adnexa; ~~and~~ but

16 (2) does not include the ~~use~~ following  
17 categories of surgery ~~[or injections]~~ in the treatment of eye  
18 diseases:

19 (a) surgery requiring full-thickness  
20 incision or excision of the cornea or sclera;

21 (b) laser-in-situ keratomileusis and  
22 photorefractive keratectomy;

23 (c) penetrating or lamellar keratoplasty  
24 or pterygium surgery;

25 (d) incisional surgery for cosmetic or

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1 mechanical repair of blepharochalasis, ptosis and tarsorrhaphy;

2 (e) surgery of the retina and ciliary  
3 body, including cryotherapy;

4 (f) surgical extraction of the  
5 crystalline lens; or

6 (g) surgery of the extraocular muscles;

7 B. "ophthalmic lens" means a lens that has a  
8 spherical, cylindrical or prismatic value, is ground pursuant  
9 to a prescription and is intended to be used as eyeglasses;

10 C. "contact lens" means a lens to be worn on the  
11 anterior segment of the human eye;

12 D. "prescription" means a written order by an  
13 optometrist or a physician for an individual patient for:

14 (1) ophthalmic lenses;

15 (2) contact lenses; or

16 (3) a topical ocular pharmaceutical agent or  
17 an oral pharmaceutical agent that is regulated pursuant to the  
18 New Mexico Drug, Device and Cosmetic Act;

19 E. "eyeglasses" means an exterior optical device  
20 using ophthalmic lenses for the correction or relief of  
21 disturbances in and anomalies of human vision; and

22 F. "board" means the board of optometry."

23 Section 2. Section 61-2-10.2 NMSA 1978 (being Laws 1995,  
24 Chapter 20, Section 5, as amended) is amended to read:

25 "61-2-10.2. DESIGNATION OF ORAL PHARMACEUTICAL AGENTS--

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1 CERTIFICATION FOR USE OF CERTAIN AGENTS.--

2 ~~[A. Subject to the provisions of the Optometry~~  
3 ~~Act, optometrists qualified and certified by the board may~~  
4 ~~prescribe or administer the following classes of oral~~  
5 ~~pharmaceutical agents:~~

6 ~~(1) anti-infective medications, not~~  
7 ~~including antifungals;~~

8 ~~(2) anti-glaucoma medications, not~~  
9 ~~including osmotic medications;~~

10 ~~(3) anti-allergy medications;~~

11 ~~(4) anti-inflammatory medications, not~~  
12 ~~including oral corticosteroids and immunosuppression agents;~~  
13 ~~and~~

14 ~~(5) analgesic medications, including~~  
15 ~~schedules III through V controlled substances, as provided in~~  
16 ~~the Controlled Substances Act.~~

17 ~~B.]~~ A. The board shall issue certification for  
18 the use of oral pharmaceutical agents [as set forth in  
19 ~~Subsection A of this section]~~ to optometrists currently  
20 licensed by the board who are certified for the use of  
21 topical ocular pharmaceutical agents. To be certified, an  
22 optometrist shall submit to the board proof of having  
23 satisfactorily completed a course in pharmacology as applied  
24 to optometry, with particular emphasis on the administration  
25 of oral pharmaceutical agents for the purpose of examination

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1 of the human eye, and analysis of ocular functions and  
2 treatment of visual defects or abnormal conditions of the  
3 human eye and its adnexa. The course shall constitute a  
4 minimum of twenty hours of instruction in clinical  
5 pharmacology, including systemic pharmacology as applied to  
6 optometry, and shall be taught by an accredited institution  
7 approved by the board.

8 ~~[G.]~~ B. As of July 1, 1996, all applicants for  
9 licensure shall meet the requirements for certification in  
10 the use of diagnostic, topical therapeutic and oral  
11 pharmaceutical agents as set forth in the Optometry Act and  
12 shall successfully complete the board's examination in  
13 diagnostic, topical and oral pharmaceutical agents prior to  
14 licensure.

15 ~~[D.]~~ C. The certification authorized by this  
16 section shall be displayed in a conspicuous place in the  
17 optometrist's principal office or place of business."

18 Section 3. A new section of the Optometry Act is  
19 enacted to read:

20 "[NEW MATERIAL] CERTIFICATION FOR USE OF CERTAIN LASER  
21 TREATMENT DEVICES.--

22 A. Subject to the provisions of the Optometry  
23 Act, only optometrists qualified and certified by the board  
24 may perform treatment procedures with laser devices.

25 B. The board shall issue certification for the

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1 use of laser treatment devices. To be certified in the use  
2 of laser treatment devices, an optometrist shall:

3 (1) be currently certified by the board in  
4 the use of topical pharmaceutical agents;

5 (2) be currently certified by the board in  
6 the use of oral pharmaceutical agents;

7 (3) submit to the board proof of having  
8 satisfactorily completed a course in laser treatment as  
9 applied to optometry with particular emphasis on the  
10 biophysics of lasers; laser application in clinical  
11 optometry; laser hazards and laser safety standards; laser  
12 indications, contraindications and potential complications;  
13 and supervised competent performance of laser procedures in a  
14 clinical treatment setting. The course shall be administered  
15 by an accredited institution approved by the board; and

16 (4) submit to the board proof of having  
17 complied with any additional requirements of the United  
18 States food and drug administration for the use of a specific  
19 laser device.

20 C. The certification authorized by this section  
21 shall be displayed in a conspicuous place in the  
22 optometrist's principal office or place of business."

23 Section 4. Section 61-2-14 NMSA 1978 (being Laws 1973,  
24 Chapter 353, Section 12, as amended) is amended to read:

25 "61-2-14. OFFENSES.--

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1           A. A person who commits one of the following acts  
2 is guilty of a fourth degree felony and upon conviction shall  
3 be sentenced pursuant to the provisions of Section 31-18-15  
4 NMSA 1978:

5                   (1) practicing or attempting to practice  
6 optometry without a valid current license issued by the  
7 board;

8                   (2) using or attempting to use a topical  
9 ocular pharmaceutical agent or an oral pharmaceutical agent  
10 that is regulated pursuant to the provisions of the New  
11 Mexico Drug, Device and Cosmetic Act without having the  
12 certification for its use issued by the board, unless the  
13 administration of pharmaceutical agents is done under the  
14 direct supervision of a licensed optometrist certified to  
15 administer the pharmaceutical agents in accordance with the  
16 provisions of the Optometry Act; [~~or~~]

17                   (3) using or attempting to use laser  
18 treatment devices without having a certification for its use  
19 issued by the board; or

20                   [~~(3)~~] (4) permitting a person in one's  
21 employ, supervision or control to practice optometry, [~~or~~]  
22 use pharmaceutical agents described in Paragraph (2) of this  
23 subsection, or use a laser treatment device, unless that  
24 person is licensed and certified in accordance with the  
25 provisions of the Optometry Act or unless the administration

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1 of pharmaceutical agents is done under the direct supervision  
2 of a licensed optometrist certified to administer the  
3 pharmaceutical agents in accordance with the provisions of  
4 the Optometry Act.

5 B. A person who commits one of the following acts  
6 is guilty of a misdemeanor and upon conviction shall be  
7 sentenced pursuant to the provisions of Section 31-19-1 NMSA  
8 1978:

9 (1) making a willfully false oath or  
10 affirmation where the oath or affirmation is required by the  
11 Optometry Act;

12 (2) selling or using any designation,  
13 diploma or certificate tending to imply that one is a  
14 practitioner of optometry, unless one holds a license as  
15 provided by the Optometry Act;

16 (3) refusing, after a request, to provide a  
17 patient a copy of ~~[his]~~ the patient's eyeglasses  
18 prescription, if the prescription is not over one year old;

19 (4) duplicating or replacing an ophthalmic  
20 lens without a current prescription not more than two years  
21 old or without a written authorization from the patient if  
22 the prescription is not available;

23 (5) except for licensed optometrists, using  
24 any trial lenses, trial frames, graduated test cards or other  
25 appliances or instruments for the purpose of examining the

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1 eyes or rendering assistance to anyone who desires to have an  
2 examination of the eyes, but it is not the intent of this  
3 paragraph to prevent [~~any~~] a school nurse, schoolteacher or  
4 employee in public service from ascertaining the possible  
5 need of vision services, if the person, clinic or program  
6 does not attempt to diagnose or prescribe ophthalmic lenses  
7 for the eyes or recommend any particular practitioner or  
8 system of practice;

9 (6) advertising the fabricating, adapting,  
10 employing, providing, sale or duplication of eyeglasses or  
11 any part [~~thereof~~] of them, but this paragraph does not  
12 preclude the use of a business name, trade name or trademark  
13 not relating to price or the use of the address, telephone  
14 number, office hours and designation of the provider, in or  
15 at retail outlets, on business cards, eyeglass cleaners and  
16 cases or in news media or in public directories, mailings and  
17 announcements of location openings or the use of the words  
18 "doctors' prescriptions for eyeglasses filled" or "eyeglass  
19 repairs, replacements and adjustments"; or

20 (7) selling of prescription eyeglasses or  
21 contact lenses, frames or mountings for lenses in an  
22 establishment in which the majority of its income is not  
23 derived from being engaged in that endeavor."